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No. A-88

IN THE SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1984

ROSEMARY HELFRICHT,

PETITIONER,

v.

STATE OF NEW JERSEY,

RESPONDENT.

ON PETITION FOR A WRIT OF CERTIORARI TO THE
SUPREME COURT OF NEW JERSEY

RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR CERTIORARI

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QUESTION PRESENTED

Whether petitioner's Fourth Amendment rights were violated when she was questioned and subsequently arrested at her home by police officers investigating an accident involving her abandoned automobile?

JURISDICTION

Respondents agree that 28 U.S.C. 1257(3) is the basis for this Court's jurisdiction.

TABLE OF CONTENTS

PAGE

QUESTION PRESENTED.....i

JURISDICTION.....i

OPINIONS BELOW.....1

CONSTITUTIONAL PROVISIONS, STATUTES AND RULES INVOLVED.....2

COUNTER-STATEMENT OF THE CASE.....16

LEGAL ARGUMENT

POINT I THE PETITION DOES NOT PRESENT A GRAVE MATTER OF GENERAL IMPORTANCE AND NO SUBSTANTIAL QUESTION EXISTS IN THE PRESENT CASE BECAUSE THIS COURT'S PRIOR DECISIONS CLEARLY INDICATE THAT PETITIONER'S FOURTH AMENDMENT RIGHTS WERE NOT VIOLATED.....24

CONCLUSION.....30

TABLE OF APPENDIX

Petitioner's Judgment of Conviction, dated May 16, 1984.....RA1

Order of Superior Court, Law Division Staying Petitioner's Sentence, dated June 15, 1984.....RA2 to 3

Order of Superior Court, Appellate Division Staying Petitioner's Sentence pending her Petition for Certification, dated June 11, 1985.....RA4

Order of Supreme Court of United States denying Petitioner's application for continuation of Stay, dated October 7, 1985.....RA5

CASES CITED

State v. Rosemary Helfricht, Docket No. A-5054-83T4 (App. Div. March 29, 1985) (Unpublished Opinion).....22,25,27,28,29

State v. Martin, 87 N.J. 561, 436 A.2d 96 (1981).....28

Welsh v. Wisconsin, ___ U.S. ____, 104 S.Ct. 2091 (1984).....26,27,29

SUPREME COURT RULES CITED

Rule 17 - Considerations Governing Review on Certiorari.....24

NEW JERSEY STATUTES CITED

N.J.S. 39:4-50.....18,19,20,21

N.J.S. 39:4-129.....19,20

N.J.S. 39:4-130.....19,20

NEW JERSEY COURT RULES CITED

R. 2:12-4 New Jersey Rules Governing Appellate Practice.....25

R. 3:5-7(a) New Jersey Rules Governing Criminal Practice.....20,28

R. 3:5-7(e) New Jersey Rules Governing Criminal Practice.....28

OTHER SOURCES CITED

28 U.S.C. Sec. 1257(3).....i

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OPINIONS BELOW

The opinion of the Appellate Division of the Superior Court of the State of New Jersey, dated March 29, 1985, affirming petitioner's conviction, is appended to petitioner's Petition for Certiorari. (Pa 1 to 3).

CONSTITUTIONAL PROVISIONS, STATUTES AND RULES INVOLVED

CONSTITUTIONAL PROVISIONS

United States Constitution, Amendment IV.:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrant shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

SUPREME COURT RULES

Rule 17 of the Rules of the Supreme Court of the United States Considerations Governing Review on Certiorari

> 1. A review on writ of certiorari is not a matter of right, but of judicial discretion, and will be granted only when there are special and important reasons therefor. The following, while neither controlling nor fully measuring the Court's discretion, indicate the character of reasons that will be considered.
>
> (a) When a federal court of appeals has rendered a decision in conflict with the decision of another federal court of appeals on the same matter; or has decided a federal question in a way in conflict with a state court of last resort; or has so far departed from the accepted and usual course of judicial proceedings, or so far sanctioned such a departure by a lower court, as to call for an exercise of this Court's power of supervision.

(b) When a state court of last resort has decided a federal question in a way in conflict with the decision of another state court of last resort or of a federal court of appeals.
(c) When a state court or a federal court of appeals has decided an important question of federal law which has not been, but should be, settled by this Court, or has decided a federal question in a way in conflict with applicable decisions of this Court.

2. The same general considerations outlined above will control in respect of petitions for writs of certiorari to review judgments of the Court of Claims [Claims Court], of the Court of Customs and Patent Appeals, and of any other court whose judgments are reviewable by law on writ of certiorari.

NEW JERSEY STATUTES

N.J.S. 39-4-50

Operating Motor Vehicles While Under the Influence of Intoxicants.

(a) A person who operates a motor vehicle while under the influence of intoxicating liquor, narcotic, hallucinogenic or habit-producing drug, or operates a motor vehicle with a blood alcohol concentration of 0.10% or more by weight of alcohol in the defendant's blood or permits another person who is under the influence of intoxicating liquor, narcotic, hallucinogenic or habit-producing drug to operate a motor vehicle owned by him or in his custody or control or permits another to operate a motor vehicle with a blood alcohol concentration of 0.10% or more by weight of alcohol in the defendant's blood, shall be subject:
(1) For the first offense, to a fine of not

less than $250.00 nor more than $400.00 and a period of detainment of not less than 12 hours nor more than 48 hours spent during two consecutive days of not less than six hours each day and served as prescribed by the program requirements of the Intoxicated Driver Resource Centers established under subsection (f) of this section and (or imprisonment for a term of not more than 30 days or both), in the discretion of the court, a term of imprisonment of not more than 30 days and shall forthwith forfeit his right to operate a motor vehicle over the highways of the State for a period of not less than six months nor more than one year.

(2) For a second violation, a person shall be subject to a fine of not less than $500.00 nor more than $1,000.00, and shall be ordered by the court to perform community service for a period of 30 days, which shall be of such form and on such terms as the court shall deem appropriate under the circumstances and shall be sentenced to imprisonment for a term of not less than 48 consecutive hours, which shall not be suspended or served on probation, nor more than 90 days, and shall forfeit his right to operate a motor vehicle over the highways of this State for a period of two years upon conviction, and, after the expiration of said period, he may make application to the Director of the Division of Motor Vehicles for a license to operate a motor vehicle, which application may be granted at the discretion of the director, consistent with subsection (b) of this section.

(3) For a third or subsequent violation, a person shall be subject to a fine of $1,000.00 and shall be sentenced to imprisonment for a term of not less than 180 days, except that the court may lower such term for each day, not exceeding 90 days, served performing community service in such form and on such terms as the court shall deem appropriate under the circumstances and shall thereafter

forfeit his right to operate a motor vehicle over the highways of this State for 10 years.

If the driving privilege of any person is under revocation or suspension for a violation of any provision of this Title at the time of any conviction for a violation of this section, the revocation or suspension period imposed shall commence as of the date of termination of the existing revocation or suspension period. A court that imposes a term of imprisonment under this section may sentence the person so convicted to the county jail, to the workhouse of the county wherein the offense was committed, to an inpatient rehabilitation program or to an Intoxicated Driver Resource Center or other facility approved by the Director of the Division of Alcoholism in the Department of Health provided that for a third or subsequent offense a person shall not serve a term of imprisonment at an Intoxicated Driver Resource Center as provided in subsection (f).

A person who has been convicted of a previous violation of this section need not be charged as a second or subsequent offender in the complaint made against him in order to render him liable to the punishment imposed by this section on a second or subsequent offender, but if the second offense occurs more than 10 years after the first offense the court shall treat the second conviction as a first offense for sentencing purposes and if a third offense occurs more than 10 years after the second offense, the court shall treat the third conviction as a second offense for sentencing purposes.

(b) A person convicted under this section must satisfy the screening, evaluation, referral and program requirements of the Division of Alcoholism's Bureau of Alcohol Countermeasures, and of the Intoxicated Driver Resource Centers and a program of alcohol education and highway safety as prescribed by the Director of the Division of Motor Vehicles. The sentencing

court shall inform the person convicted that failure to satisfy such requirements shall result in a mandatory two day term of imprisonment in a county jail and driver license revocation or suspension until such requirements are satisfied, unless stayed by court order in accordance with Rule 7:8-2 of the N.J. Court Rules, 1969, or R.S. 39:5-22. Upon sentencing, the court shall forward to the Bureau of Alcohol Countermeasures a copy of the person's conviction record. A fee, of $40.00, shall be payable to the Alcohol Education, Rehabilitation and Enforcement Fund established pursuant to section 3, P.L. 1983, c.531 (C.26:28-32) to support the Bureau of Alcohol Countermeasures to defray the cost of screening, evaluation and alcohol education programs in the Intoxicated Driver Resource Centers.

(c) Upon conviction of a violation of this section, the court shall collect forthwith the New Jersey driver's license or licenses of the person so convicted and forward such license or licenses to the Director of the Division of Motor Vehicles. The court shall inform the person convicted that if he is convicted of personally operating a motor vehicle during the period of license suspension imposed pursuant to subsection (a) of this section, he shall, upon conviction, be subject to the penalties established in R.S. 39:3-40. The person convicted shall be informed orally and in writing. A person shall be required to acknowledge receipt of that written notice in writing. Failure to receive a written notice or failure to acknowledge in writing the receipt of a written notice shall not be a defense to a subsequent charge of a violation of R.S. 39:3-40. In the event that a person convicted under this section is the holder of any out-of-state driver's license, the court shall not collect the license but shall notify forthwith the director who shall, in turn, notify appropriate officials in the licensing

jurisdiction. The court shall, however, revoke the nonresident's driving privilege to operate a motor vehicle in this State in accordance with this section. Upon conviction of a violation of this section, the court shall notify the person convicted, orally and in writing, of the penalties for a second, third or subsequent violation of this section. A person shall be required to acknowledge receipt of that written notice in writing. Failure to receive a written notice or failure to acknowledge in writing the receipt of a written notice shall not be a defense to a subsequent charge of a violation of this section.

(d) The Director of the Division of Motor Vehicles shall promulgate rules and regulations pursuant to the "Administration Procedure Act," P.L.1968, c.410 (C.52:14B-1 et. seq.) in order to establish a program of alcohol education and highway safety as prescribed by this act.

(e) Any person accused of a violation of this section who is liable to punishment imposed by this section as a second or subsequent offender shall be entitled to the same rights of discovery as allowed defendants pursuant to the Rules Governing Criminal Practice as set forth in the Rules Governing the Courts of the State of New Jersey.

(f) The counties, in cooperation with the Division of Alcoholism and the Division of Motor Vehicles, but subject to the approval of the Division of Alcoholism, shall designate and establish on a county or regional basis Intoxicated Driver Resource Centers. These centers shall have the capability of serving treatment referral centers and as court monitors of a person's compliance with the ordered treatment, service alternative or community service. All centers established pursuant to this subsection shall be administered by a certified alcoholism counsellor or other professional with a

minimum of five years experience in treatment of alcoholism. All centers shall be required to develop individualized treatment plans for all persons attending the centers provided that the duration of any ordered treatment or referral shall not exceed one year. It shall be the center's responsibility to establish networks with the community alcohol education, treatment and rehabilitation resources and to receive monthly reports from the referral agencies regarding a person's participation and compliance with the program. Nothing in the subsection shall bar these centers from developing their own education and treatment programs provided that they are approved by the Division of Alcoholism.

Upon a person's failure to report to the initial screening or any subsequently ordered referral, the Intoxicated Driver Resource Center shall promptly notify the sentencing court of the person's failure to comply.

Required detention periods at the Intoxicated Driver Resource Centers shall be determined according to the individual treatment classification assigned by the Bureau of Alcohol Countermeasures. Upon attendance at an Intoxicated Driver Resource Center, a person shall be assessed a per diem charge of $25.00 to be collected by the center and used to defray costs.

The centers shall conduct a program of alcohol education and highway safety as prescribed by the Director of the Division of Motor Vehicles.

The Director of the Division of Alcoholism shall adopt rules and regulations pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) in order to effectuate the purposes of the subsection.

N.J.S. 39:4-129

Responsibility in Case of Accidents.

(a) The driver of any vehicle, knowingly involved in an accident resulting in injury or death to any person shall immediately stop the vehicle at the scene of the accident or as close thereto as possible but shall then forthwith return to and in every event shall remain at the scene until he has fulfilled the requirements of subsection (c) of this section. Every such stop shall be made without obstructing traffic more than is necessary. Any person who shall violate this subsection shall be fined not less that $100.00 nor more than $1,000.00 or be imprisoned for a period of 30 days, or both, for the first offense, and for a subsequent offense shall be fined not less than $500.00 nor more than $2,000.00, and be imprisoned for a period of not less than 3 months nor more than 6 months.

In addition, any person convicted under this subsection shall forfeit his right to operate a motor vehicle over the highways of this State for a period of not less than 6 months from the date of his conviction for the first offense and for a subsequent offense shall thereafter forfeit his right to operate a motor vehicle over the highways of this State.

(b) The driver of any vehicle knowingly involved in an accident resulting only in damage to a vehicle, including his own vehicle, or other property which is attended by any person shall immediately stop his vehicle at the scene of such accident or as close thereto as possible, but shall then forthwith return to and in every event shall remain at the scene of such accident until he has fulfilled the requirements of subsection (c) of this section. Every such stop shall be

made without obstructing traffic more than is necessary. Any person who shall violate this subsection shall be fined not less than $25.00 nor more than $100.00, or be imprisoned for a period of not more than 30 days, or both, for the first offense, and for a subsequent offense, shall be fined not less than $100.00 nor more than $200.00, or be imprisoned for a period of not less than 30 days nor more than 90 days, or both.

(c) The driver of any vehicle knowingly involved in an accident resulting in injury or death to any person or damage to any vehicle or property shall give his name and address and exhibit his operator's license, and registration certificate of his vehicle to the person injured or whose vehicle or property was damaged and to any police officer or witness of the accident, and to the driver or occupants of the vehicle collided with and render to a person injured in that accident reasonable assistance including the carrying of that person to a hospital or a physician for medical or surgical treatment, if it is apparent that the treatment is necessary or is requested by the injured person.

In the event that none of the persons specified are in condition to receive the information to which they otherwise would be entitled under this subsection, and no police officer is present, the driver of any vehicle involved in such accident after fulfilling all other requirements of subsections (a) and (b) of this section, insofar as possible on his part to be performed, shall forthwith report such accident to the nearest office of the local police department or of the county police of the county or of the State Police and submit thereto the information specified in this subsection.

(d) The driver of any vehicle which knowingly collides with or is knowingly involved in an accident with any vehicle or other property which is unattended resulting in any damage to

such vehicle or other property shall immediately stop and shall then and there locate and notify the operator or owner of such vehicle or other property of the name and address of the driver and owner of the vehicle striking the unattended vehicle or other property or, in the event an unattended vehicle is struck and the driver or owner thereof cannot be immediately located, shall attach securely in a conspicuous place in or on such vehicle a written notice giving the name and address of the driver and owner of the vehicle doing the striking or, in the event other property is struck and the owner thereof cannot be immediately located, shall notify the nearest office of the local police department or of the county police of the county or of the State Police and in addition shall notify the owner of the property as soon as the owner can be identified and located. Any person who violates this subsection shall be punished as provided in subsection (b) of this section.

(e) The driver of any motor vehicle involved in an accident resulting in injury or death to any person or damage in the amount of $250.00 or more to any vehicle or property shall be presumed to have knowledge that he was involved in such accident and such presumption shall be rebuttable in nature.

N.J.S. 39:4-130

Report of Accidents

The driver of a vehicle or street car involved in an accident resulting in injury to or death of any person, or damage to property of any one person in excess of $500.00 shall by the quickest means of communication give notice of such accident to the local police department or to the nearest office of the county police of the county or of the State Police, and in addition shall within 10 days

after such accident forward a written report of such accident to the division on forms furnished by it. Such written reports shall contain sufficiently detailed information with reference to a motor vehicle accident, including the cause, the conditions then existing, the persons and vehicles involved and such information as may be necessary to enable the director to determine whether the requirements for the deposit of security required by law are inapplicable by reason of the existence of insurance or other circumstances. The director may rely upon the accuracy of the information contained in any such report, unless he has reason to believe that the report is erroneous. The division may require operators involved in accidents to file supplemental reports of accidents upon forms furnished by it when in the opinion of the division, the original report is insufficient. The reports shall be without prejudice, shall be for the information of the division, and shall not be open to public inspection. The fact that the reports have been so made shall be admissible in evidence solely to prove a compliance with this section, but no report or any part thereof or statement contained therein shall be admissible in evidence for any other purpose in any proceeding or action arising out of the accident.

Whenever the driver of a vehicle is physically incapable of giving immediate notice or making a written report of an accident as required in this section and there was another occupant in the vehicle at the time of the accident capable of giving notice or making a report, such occupant shall make or cause to be made said notice or report not made by the driver.

Whenever the driver is physically incapable of making a written report of an accident as required by this section and such driver is not the owner of the vehicle, then the owner of the vehicle involved in such accident shall make such report not made by

the driver.

A written report of an accident shall not be required by this section if a law enforcement officer submits a written report of the accident to the division pursuant to R.S. 39:4-131.

Any person who violates this section shall be punished as provided in subsection (b) of section 39:4-129 of the Revised Statutes.

The director may revoke or suspend the operator's license privilege and registration privilege of a person who violates this section.

NEW JERSEY COURT RULES

R. 2:12-4 of the Rules Governing Appellate Practice.

Grounds for Certification.

Certification will be granted only if the appeal presents a question of general public importance which has not been but should be settled by the Supreme Court or is similar to a question presented on another appeal to the Supreme Court; if the decision under review is in conflict with any other decision of the same or a higher court or calls for an exercise of the Supreme Court's supervision and in other matters if the interest of justice requires. Certification will not be allowed on final judgments of the Appellate Division except for special reasons.

R. 3:5-7 of the Rules Governing Criminal Practice.

Motion to Suppress Evidence and for Return of Property.

(a) Notice; Time. On notice to the prosecutor of the county in which the matter is pending or threatened, to the applicant for the

warrant if the search was with a warrant, and to co-indictees, if any, and in accordance with the applicable provisions of R. 1:6-3 and R. 3:10, a person claiming to be aggrieved by an unlawful search and seizure and having reasonable grounds to believe that the evidence obtained may be used against him in a penal proceeding, may apply to the Superior Court only and in the county in which the matter is pending or threatened to suppress the evidence and for the return of the property seized even though the offense charged or to be charged may be within the jurisdiction of a municipal court. Such motion shall be made within 30 days after the initial plea to the charge unless the court, for good cause shown, enlarges the time. A motion made before the trial shall be determined before trial. The motion may be made after trial has commenced only if the trial court finds that defendant could not reasonable have made it prior thereto.

(b) Briefs. If the search was made with a warrant, a brief stating the facts and arguments in support of the motion shall be submitted with the notice of motion. The State shall, within ten days thereafter, submit a brief stating the facts and arguments in support of the search to which the movant may reply by brief submitted no later than three days before the hearing. If the reply by brief submitted no later than three days before the hearing. If the search was made without a warrant, the State shall, within 15 days of the filing of the motion, file a brief, including a statement of the facts as it alleges them to be, and the movant shall file a brief and counter statement of facts no later than three days before the hearing.

(c) Hearing. All such motions by co-indictees shall be consolidated for determination in a single hearing, except for good cause shown. If material facts are disputed, testimony thereon shall be taken in open court.

(d) Appellate Review. Denial of a motion made pursuant to this rule may be reviewed on appeal from a judgment of conviction notwithstanding that such judgment is entered following a plea of guilty.
(e) Return of Property. If a motion made pursuant to this rule is granted, the property shall be delivered to the person entitled thereto, unless otherwise subject to lawful detention, and shall not be admissible in evidence in any court. Delivery of the property need not be made, however, until the expiration of the time within which the State may obtain leave to appeal pursuant to R. 2:5-6.
(f) Consequences of Failure to Move. If a timely motion is not made in accordance with this rule, the defendant shall be deemed to have waived any objection during trial to the admission of evidence on the ground that such evidence was unlawfully obtained.
(g) Effect of Irregularity in Warrant. In the absence of bad faith, no search or seizure made with a search warrant shall be deemed unlawful because of technical insufficiencies or irregularities in the warrant or in the papers or proceeding to obtain it, or in its execution.

COUNTER-STATEMENT OF THE CASE

On June 20, 1982, at approximately 3:35 A.M., New Jersey State Troopers Manus Campbell and Robert Toole responded to a reported accident in Colts Neck Township, Monmouth County, New Jersey. When they arrived at the scene, the troopers found a 1980 Cadillac abandoned in the middle of Dutch Lane Road. The door of the vehicle was open and the keys were in the ignition. The vehicle had two flat tires and substantial body damage on its left side. The troopers concluded that an accident had occurred, possibly a hit and run. No one was in the area (MCT 14-14 to 15)[1]. The troopers retrieved the registration and learned that the vehicle was registered to Craig Helfricht, 23 Downing Hill Lane, Colts Neck. They proceeded to that address at 4:20 A.M. (MCT 18-2 to 3).

Craig Helfricht answered the door. The

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1. MCT refers to the February 17, 1984, transcript of the hearing in the Colts Neck Township Municipal Court.

troopers asked him if he owned a 1980 red Cadillac bearing New Jersey license plate number 431-NIS. accident. Mr. Helfricht became upset and yelled at the troopers to come back the next day and he would deal with it then. The troopers indicated that they needed to interview the person who had operated the vehicle. Mr. Helfricht admitted that his wife, petitioner Rosemary Helfricht, had been driving the car (MCT 14-17) and again told the troopers to leave his property. The troopers continued to question Mr. Helfricht about their suspicion that a hit and run accident had occurred. Mr. Helfricht refused to cooperate with the troopers and attempted to slam the door (MCT 14-21).

At this point, the troopers stepped into the residence and asked Mr. Helfricht to get his wife. He refused to do so. After a few minutes, Rosemary Helfricht appeared. The troopers questioned her about the accident. The petitioner admitted that she had been operating the vehicle. She stated that at the intersection of Laurelwood Road and Mulberry Lane something ran in front of her vehicle,

causing her to lose control of it. She admitted that she drove onto the lawn of 41 Laurel Wood Drive, knocking down a mailbox and a street sign, and then drove her vehicle to Dutch Lane Road where the vehicle stopped. She then walked home (MCT 17-4 to 12).

While questioning petitioner, the troopers detected the odor of an alcoholic beverage on her breath. Her speech was slow and slurred and she stuttered when she talked (MCT 17-12 to 15). Trooper Campbell asked petitioner to recite the alphabet. She could not. When asked if she had consumed any alcoholic beverage since returning home after the accident, she stated that she had not (MCT 19-24 to 25; MCT 20-1 to 4). The petitioner then became abusive, shouting and screaming that the troopers were "making a big deal out of nothing".

Rosemary Helfricht was placed under arrest for a violation of N.J.S. 39:4-50, Driving While Under the Influence of Alcohol. As she was escorted to the police car, Mr. Helfricht followed, yelling,

screaming and threatening the officers. In the car, the petitioner again denied having anything to drink after the accident. She staggered while walking into the station (MCT 20-20 to 22). Petitioner was charged with the following offenses: N.J.S. 39:4-50, Driving While Under the Influence of Alcohol; N.J.S. 39:4-129(b), Leaving the Scene of an Accident; and N.J.S. 39:4-130, Failure to Report an Accident.

At headquarters petitioner admitted that she drank four glasses of white wine that night. She claimed to have consumed her last drink between 11 P.M. on June 19, 1982, and midnight on June 20, 1982. Breathalyzer readings were obtained at 5:21 A.M. and 5:30 A.M. The results were .16% and .15% respectively (MCT 24-20 to 25; MCT 29-15 to 17; MCT 30-15). The petitioner failed to perform balance tests properly (MCT 30-16 to 25; MCT 31-1 to 31).

Continued investigation at the scene of the accident revealed damage to the street sign and to the mailbox and Belgium blocks on the lawn of 41 Laurelwood Drive. Additionally, a Cadillac hub cap was discovered and later matched to petitioner's

vehicle (MCT 31-23 to 25; MCT 32-1 to 7; MCT 32-24 to 25; MCT33-1 to 6).

On February 17, 1984, a trial was commenced in the Colts Neck Municipal Court before The Honorable Peter Sachs, J.M.C., at which time petitioner was found guilty of violating N.J.S. 39:4-50, N.J.S. 39:4-129, and N.J.S. 39:4-130. The Court imposed a $500.00 fine, a two (2) years revocation of her driving privilege, a one (1) day jail sentence, 29 days of community service, and $15.00 costs.

On February 24, 1984, petitioner filed a Notice of Appeal to the Superior Court, Law Division, Monmouth County, New Jersey (Pa 7 to 8).

On April 15, 1984, petitioner filed a Motion to Suppress Evidence Seized Without a Warrant pursuant to R. 3:5-7(a) of the N.J. Rules Governing Criminal Practice. [hereinafter R. 3:5-7(a)].

On April 27, 1984, a trial de novo was held before The Honorable Donald J. Cunningham, J.S.C., and petitioner's Motion to Suppress was withdrawn (TDN 1 to 12)[2].

2. "TDN" refers to the May 16, 1984, transcript of proceedings on petitioner's trial de novo in the Superior Court of New Jersey, Law Division.

On May 16, 1984, Judge Cunningham again found petitioner guilty of Driving While Intoxicated, contrary to N.J.S. 39:4-50 (RA 1)[3]. Judge Cunningham imposed the same sentence which had been imposed in the Colts Neck Municipal Court, together with $15.00 costs on appeal (RA 1). On June 15, 1984, Judge Cunningham entered an order admitting petitioner to bail pending appeal of her conviction to the Superior Court of New Jersey, Appellate Division (RA 2 to 3).

On June 28, 1984, defendant filed a Notice of Appeal with the Superior Court, Appellate Division, along with an application for Stay of Enforcement of the Judgment of Conviction, which application was granted by The Honorable Morton I. Greenberg, J.A.D., on June 28, 1984 (PDA 9 to 11)[4].

On March 29, 1985, the Superior Court of New Jersey, Appellate Division, affirmed petitioner's

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3. "RA" refers to Respondent's Appendix.

4. "PDA" refers to Petitioner-Defendant's Appendix to her Petition for Certiorari.

conviction in State v. Rosemary Helfricht, Docket No. A-5054-83T4 (App. Div. March 29, 1985) (unpublished opinion) (PDA 1 to 3).

On June 11, 1985, the Superior Court of New Jersey, Appellate Division, granted petitioner's motion for a stay of her sentence pending her Petition for Certification to the New Jersey Supreme Court.

On June 13, 1985, the New Jersey Supreme Court ordered that petitioner's Petition for Certification to that Court be denied (PDA 4).

On July 10, 1985, the Supreme Court of New Jersey granted petitioner's application for a stay pending her application for a single justice stay pending her Petition for Certiorari to this Court through August 5, 1985 (PDA 12). The New Jersey Supreme Court also ordered that its stay shall automatically dissolve in the event this Court denies petitioner's application for a stay (PDA 12).

On August 5, 1985, the Honorable Byron R. White, Associate Justice, denied petitioner's

application for a stay pending review of petitioner's Petition for a Writ of Certiorari to the United States Supreme Court (PDA 13).

On October 7, 1985, this Court entered an order providing that "(t)he application to continue [the] stay addressed to Justice Brennan and referred to the Court is denied" (RA 5).

REASONS FOR DENYING CERTIORARI
POINT I

THE PETITION DOES NOT PRESENT A GRAVE MATTER OF GENERAL IMPORTANCE AND NO SUBSTANTIAL QUESTION EXISTS IN THE PRESENT CASE BECAUSE THIS COURT'S PRIOR DECISIONS CLEARLY INDICATE THAT PETITIONER'S FOURTH AMENDMENT RIGHTS WERE NOT VIOLATED.

Pursuant to Rule 17 of the Rules of the Supreme Court of the United States, "(a) review on writ of certiorari is not a matter of right, but of judicial discretion, and will be granted only when there are special and important reasons therefor." Among the factors to be considered is whether a state court

> ...has decided an important question of federal law which has not been, but should be settled by this Court, or has decided a federal question in a way in conflict with applicable decisions of this Court [Rule 17.1(c)].

Respondent submits that in the present case, petitioners claims do not consititue "special and important reasons" which justify granting petitioner's writ of certiorari. In fact, petitioner has failed in her attempt to have the New Jersey Supreme Court review the decision of the Superior Court of New Jersey, Appellate Division,

in State v. Rosemary Helfricht, Docket No. A-5054-83T4 (App. Div. March 29, 1985) (unpublished opinion) (Pa 1 to 3). In denying the Petition for Certification to that Court, the New Jersey Supreme Court assessed petitioner's claims in light of R. 2:12-4 of the Rules Governing the Courts of the State of New Jersey (Anno. 1985). That rule provides that

> Certification will be granted only if the appeal presents a question of general public importance which has not been but should be settled by the Supreme Court or is similar to a question presented on another appeal to the Supreme Court; if the decision under review is in conflict with any other decision of the same or a higher court or calls for an exercise of the Supreme Court's supervision and in other matters if the interest of justice requires. Certification will not be allowed on final judgments of the Appellate Division except for special reasons.

Respondent submits that petitioner, having failed to obtain certification to review her conviction in the New Jersey Supreme Court, has clearly failed to advance sufficient reasons for this Court to grant her petition for a Writ of Certiorari.

Petitioner relies solely on Welsh v. Wisconsin, ____ U.S. ____, 104 S.Ct. 2091 (1984) to assert the illegality of the warrantless, nighttime entry into her home. The pertinent facts of Welsh, however, can clearly be distinguished from the facts of the instant matter. In Welsh, there was an eyewitness who observed not only the accident, but the defendant's erratic driving beforehand. Additionally, the witness spoke with the defendant and observed the defendant walking away from the scene.

In the instant matter, the first observation made of the accident was by the troopers who found the abandoned car in the middle of the road with the door open and keys in the ignition. One front tire was flat and the left side of the vehicle was dented in. Even after the registration was found the troopers still had no proof as to who was driving the vehicle at the time of the accident. The extent of any property damage or injuries to any driver or passenger were unknown. This was one concern which the Superior Court of New Jersey,

Appellate Division, specifically noted was not present in Welsh. See State v. Helfricht, supra, unpub. op. at 2 (PDA 2). Therefore, the troopers went to the petitioner's residence not with the intention of arresting her for driving while intoxicated, but to investigate the hit-and-run accident which had occurred on Dutch Lane Road. Id. at 2 (PDA 2).

Furthermore, in Welsh, the troopers not only entered the dwelling, but proceeded upstairs to the defendant's bedroom. Here, no such egregious violation occurred. The troopers stepped just inside the door and asked to speak to petitioner. They did not proceed into any other areas of the home or conduct a search throughout the home for her. After a few moments' conversation with petitioner's husband, petitioner appeared of her own volition and answered the officer's questions. Respondent contends that on the facts of the instant matter, no such unlawful search or seizure occurred. The decision of the Appellate Division is consistent with this Court's decision in Welsh and thus no substantial federal question exists to justify the granting of certiorari.

Furthermore, if it was petitioner's position that an illegal search occurred, the respondent submits that the petitioner failed to exercise the opportunities available to determine whether the trooper's actions were constitutional. The New Jersey Rules Governing Criminal Practice require a defendant to move to suppress evidence within 30 days of the initial plea. R. 3:5-7(a) The petitioner here did not do so, nor was any request made or good cause shown for enlarging the time. As the Appellate Division noted, the Motion to Suppress Evidence was withdrawn at the start of the trial de novo. State v. Helfricht, supra, unpub. op. at 1-2 (PDA 1 to 2).

The consequence of petitioner's failure to make a timely motion resulted in a waiver of petitioner's right to object to the evidence. R. 3:5-7(f) specifically provides that

> (i)f a timely motion is not made in accordance with this rule, the defendant shall be deemed to have waived any objection during trial to the admission of evidence on the grounds that such evidence was unlawfully obtained.

See also, State v. Martin, 87 N.J. 561, 436 A.2d 96 (1981).

Nonetheless, the Superior Court of New Jersey, Appellate Division, ignored the procedural deficiency and reached the merits of petitioner's argument, concluding that the troopers' actions were entirely lawful. State v. Helfricht, supra, unpub. op. at 2 (PDA 2). Respondents submit that the Appellate Court's resolution of this issue was entirely consistent with this Court's decision in Welsh v. Wisconsin, supra.

CONCLUSION

For the aforementioned facts, reasons and authorities cited in support thereof, the Respondent respectfully requests that This Honorable Court deny the within Petition for Certiorari.

Respectfully submitted,

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